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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,829	07/21/2003	Terry J. Johnson	27339008008	5745

23418 7590 11/16/2005

VEDDER PRICE KAUFMAN & KAMMHOLZ
222 N. LASALLE STREET
CHICAGO, IL 60601

EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3727

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/623,829

Applicant(s)

JOHNSON, TERRY J.

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20031003
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-13 are provisionally rejected on the ground of nonstatutory obviousness-type

double patenting as being unpatentable over claims 1-6, 8-11 and 13-15 of copending

Application No. 10/988119. Although the conflicting claims are not identical, they are not

patentably distinct from each other because all the elements in each of claims 1-13 of this

application are found in claims 1-6, 8-11 and 13-15 of the child application. The differences

between claims 1-13 and claims 1-6, 8-11 and 13-15 lies in the fact that claims 1-6, 8-11 and 13-

15 includes more elements and are thus more specific. The invention in claims 1-6, 8-11 and 13-

15 is in effect a species of the generic invention of claims 1-13. It has been held that the generic invention is anticipated by the species. See *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

Since claims 1-13 are anticipated by claims 1-6, 8-11 and 13-15 of the child application, they are not patentably distinct therefrom.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

3. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 13, “cooperatively adjacent top-forming panels” is unclear insofar as only one top panel appears to be disclosed. Also, “top-forming panels” is a double inclusion insofar as one of the top forming panels referred to was previously set forth.

The following elements are each a double inclusion insofar as the element is being reintroduced into the claims: claim 1, lines 13, 15, 16 and 18, “side-forming panels”, “adjacent top-forming and side-forming panels” (--adjacent of said top-forming and side-forming panels-- would refer back to those previously set forth) and “top-forming and side forming panels”, claim 7, lines 11 and 12, “adjacent top and side panels”, claim 9, lines 1 and 2, “one end panel” and “another panel”, claim 10, lines 1 and 2, “one end panel” and “another end panel”, claim 11, line 13, “adjacent top and side panels” and claim 13, lines 2 and 3, “one end panel” and “another end panel”.

The following elements are each unclear insofar as a plurality of the recited element were previously set forth in the claims and one cannot determine which of the plurality is being referred to: claim 1, lines 14 and 15, “the longitudinal folding crease”, claim 7, lines 4 and 5, “the side panel hinged to the top panel remote from the base panel” (in the carton, both side

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panels are hinged to the top panel and neither is located “remote from the base panel”), claim 11, line 6, same as claim 7 and claim 11, lines 20, 21, 23, 24, “the base panel” and “the base panel”.

In claim 11, lines 11 and 12, “each defined by a transverse cut line adjacent the end panels” is unclear with respect to how “each” is defined by a cut line adjacent both end panels.

In claim 11, line 16, “such adjacent end panel” is unclear with respect to which end panel is being referred to.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlund in view of Hendrickson, Jr. and Wischusen, III. Ohlund discloses all structure of the claimed blank except a lip panel hinged to the base panel and a pair of handle-forming portions formed in the top forming and side forming panels. Wischusen III teaches that it is known to hingedly secure a lip forming panel or manufacturer’s flap (17) to a base forming panel (14) in a blank for a tubular container. It would have been obvious to hingedly connect the lip forming panel (12) in Ohlund to the base forming panel (11) as taught by Wischusen III as a mere reversal of parts and to prevent interference of the lip forming panel with the end flaps. Hendrickson, Jr. teaches that it is known to provide handle forming panels in the top panel and side panels of a blank for forming a carton. It would have been obvious to provide the top and side forming panels in the blank of Ohlund with handle forming panels as taught by

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Hendrickson, Jr. to allow the carton to be easily carried and to allow collapse of the handle when not in use. Handle forming panels in carton blanks are notoriously well known in this art.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Sagel et al. Modified Ohlund does not evidence a blank which is transversely bisected by a perforated line. Sagel et al teaches that it is known to form a blank for a tubular container in two identical sections by duplicating the container sections and connecting the sections with a perforated line (see figs. 2 and 4a). It would have been obvious to duplicate the container blank of modified Ohlund as taught by Sagel et al to allow multiple separable compartments to be used by the consumer, i.e. to enhance the utility of the container.

7. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlund in view of either Brown or Bergstein. Ohlund discloses all structure of the claimed carton except opposing handles capable of being positioned in operative and inoperative positions. Each of Brown and Bergstein teaches that it is known to form a carton with fold up opposing handles. It would have been obvious to make the carton of Ohlund with fold up handles as taught by either Brown or Bergstein to facilitate easy carrying of the carton and prevent interference of the handle with stacking, movement, etc. when not in use.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 7 above, and further in view of Caster or Malinowski. Modified Ohlund does not evidence a flap lock in one of the handles for engaging the opposing handle. Each of Caster and Malinowski teaches that it is known to provide overlapping handle panels with a lock flap (32; 38, 50, respectively) to facilitate holding the handle panels together during use. It would

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have been obvious to make the handle panels in modified Ohlund with a lock flap as taught by either Caster or Malinowski to facilitate holding the panels together during use. Lock flaps within handle panels are well known in this art.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohlund in view of either Brown or Bergstein and either Peters or Montalbano. Ohlund discloses all structure of the claimed container except a pair of opposing handles, a tray and a pad. Each of Brown and Bergstein teaches that it is known to form a carton with fold up opposing handles. It would have been obvious to make the carton of Ohlund with fold up handles as taught by either Brown or Bergstein to facilitate easy carrying of the carton and prevent interference of the handle with stacking, movement, etc. when not in use. Each of Peters and Montalbano teaches that it is known to provide a side opening carton with a tray (16; 2, respectively) and a pad (15; 29, respectively). It would have been obvious to make the carton of Ohlund with an inner tray and pad as taught by either Peters or Montalbano to facilitate packaging and easy removal of the contents and/or separation of the contents within the container.

10. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 11 above, and further in view of Sagel et al. Modified Ohlund does not evidence formation of the container in two identical sections bisected by a perforated line. Sagel et al teaches that it is known to form a blank for a tubular container in two identical sections by duplicating the container sections and connecting the sections with a perforated line (see figs. 2 and 4a). It would have been obvious to duplicate the container blank of modified Ohlund as taught by Sagel et al to allow multiple separable compartments to be used by the consumer, i.e. to enhance the utility of the container.

Allowable Subject Matter

11. Claim 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims and if a terminal disclaimer is filed to obviate the double patenting rejection above.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

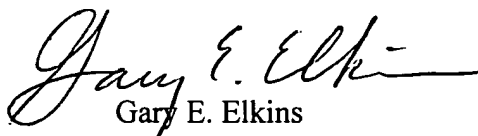
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.


Gary E. Elkins
Primary Examiner
Art Unit 3727

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14 November 2005